

**ZONING BOARD OF APPEALS**

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ZBA 2009-83

Petition of Joanna & Oliver Bandte
17 Stonecleve Road

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, November 5, 2009, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of JOANNA & OLIVER BANDTE requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that construction of a 16 foot by 20 foot deck that will meet all setback requirements on an existing non-conforming dwelling, on an 8,220 square foot lot in a district in which the minimum lot size is 10,000 square feet, at 17 STONECLEVE ROAD, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On October 20, 2009 the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing were Joanna and Oliver Bandte (the "Petitioner").

Mr. Bandte said that the request is for an addition to their original plans (ZBA 2009-40). He said that they had not looked closely at the plans for the corner of the addition. He said that when construction began, it became apparent that access to the deck that was approved would be difficult with the existing grade. He said that the idea is to pull the deck around the corner to make access possible from the side.

The Board said that the plot plan shows that the lot coverage with the proposed deck will be 25.5%. The maximum allowable lot coverage is 25%. The Board said that the deck should be pulled in somehow to meet the requirements.

The Board said that a condition will be that a revised plot plan be submitted showing that the lot coverage is not more than 25%, and that backup materials be submitted showing the coverage and how the calculations were done. The Board said that a revised dimensioned plan should also be submitted. The Board said that the deck could not go further into the setback area.

There was no one present at the Public Hearing who wished to speak to the petition.

Statement of Facts

The subject property is located at 17 Stonecleve Road, on an 8,220 square foot lot in a district in which the minimum lot size is 10,000 square feet, with a minimum front yard setback of 7.7 feet, and a minimum left side yard setback of 9.7 feet.

The Petitioner is requesting a Special Permit/Finding that construction of a 16 foot by 20 foot deck that will meet all setback requirements on an existing non-conforming dwelling, on an 8,220 square foot lot in a district in which the minimum lot size is 10,000 square feet shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

A Plot Plan dated 5/19/09, revised 10/15/09, stamped by Todd P. Chapin, Registered Land Surveyor, Existing and Proposed Floor Plans and Elevation Drawings, dated 10/15/09, prepared by Oliver Bandte, and photographs were submitted.

On October 6, 2009, the Wetlands Protection Committee reviewed the request to modify the approved construction plan and determined that the change is minor in nature and does not require the filing of a new Notice of Intent or formal amendment of the existing Order of Conditions.

On October 29, 2009, the Planning Department Staff reviewed the petition and had no objection to granting the request.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing. The subject structure does not conform to the current Zoning Bylaw, as noted in the foregoing Statement of Facts.

It is the finding of this Authority that construction of a 16 foot by 20 foot deck that will meet all setback requirements on an existing non-conforming dwelling, on an 8,220 square foot lot in a district in which the minimum lot size is 10,000 square feet, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure, as it shall neither increase an existing nonconformity nor shall it create a new nonconformity.

Therefore, a Special Permit is granted, as voted unanimously by this Authority at the Public Hearing for construction of a 16 foot by 20 foot deck that will meet all setback requirements on an existing non-conforming dwelling, on an 8,220 square foot lot in a district in which the minimum lot size is 10,000 square feet, subject to the following conditions:

1. The lot coverage shall be reduced to 25% or less.
2. The reconfigured deck shall not impinge any further into the setback.
3. A revised plan shall be submitted with backup calculations showing the lot coverage.
4. A revised dimensioned plot plan shall be submitted.

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The Inspector of Buildings is hereby authorized to issue a permit for construction upon receipt and approval of a building application and detailed construction plans.

If construction has not commenced, except for good cause, this Special Permit shall expire two years after the date time stamped on this decision.

APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE PURSUANT
TO GENERAL LAWS, CHAPTER 40A,
SECTION 17, AND SHALL BE FILED
WITHIN 20 DAYS AFTER THE DATE
OF FILING OF THIS DECISION IN THE
OFFICE OF THE TOWN CLERK.

Cynthia S. Hibbard, Acting Chairman

Robert W. Levy

David L. Grissino

cc: Planning Board
Inspector of Buildings
lrm